



Republican Policy Committee

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Senate to Vote on Ratification of the Chemical Weapons Convention

By a Unanimous Consent (U.C.) agreement entered into on June 28, 1996, the Republican Leader will take the Senate into executive session for consideration and disposition of the Chemical Weapons Convention (Treaty Doc. 103-21, Executive Calendar No. 12) prior to September 14, 1996. In compliance with the U.C., the Majority Leader has stated his intention to begin debate on the Resolution of Ratification on Thursday, September 12.

The Chemical Weapons Convention (CWC) — to date signed by 160 nations and ratified by 62 — bans the acquisition, development, production, stockpiling, transfer, retention and use of chemical weapons. Under the terms of the CWC, the treaty will enter into force 180 days after the 65th country to have ratified the Convention deposits its instrument of ratification.

Background

The 1907 multinational Hague Convention prohibited the use of poisons in war. Only seven years later, Germany began using poison gas against French and British soldiers in an attempt to break the stalemate of trench warfare in World War I.

After that war, the League of Nations met to approve the 1925 Geneva Protocol, which prohibited the use of both biological and chemical weapons in war, but allowed their development, production and stockpiling. The Geneva Protocol was signed by the United States, France, Germany, Great Britain, Italy and Japan; the United States ratified the Protocol in 1975. In 1971, the U.N. Conference on Disarmament voted to put negotiations to ban biological and chemical weapons on separate tracks.

Negotiations on the CWC were given a big push in the spring of 1991, when President George Bush forswore any use of chemical weapons in retaliation for an enemy chemical attack, once the CWC entered into force. In addition, President Bush committed the United States to eliminating its unitary chemical weapons stockpile, even if other nations did not eliminate their arsenals.

On September 3, 1991, the United States, along with more than 65 countries, signed the CWC.

Proponents argue that the CWC should be ratified because it:

- Will globalize a chemical weapons ban and thus eliminate chemical warfare, making U.S. troops safer;
- Will help combat and deter terrorism;
- Codifies a policy announced by President Bush in 1991; and
- Is effectively verifiable, with the most unprecedented and comprehensive verification and inspection regime ever contained in an arms control treaty.

Opponents of the CWC argue that the Convention:

- Will not be global because Iraq, Libya, Syria, North Korea, and Egypt have not signed the treaty, while others who have a confirmed or suspected chemical weapons program, such as mainland China, India, Iran, Israel, Pakistan and Russia have signed the CWC but may not ratify it;
- Creates a massive, new U.N.-type bureaucracy for which the United States will be obligated to pay 25 percent of its activities;
- Imposes a complex regulatory burden on U.S. industry; and
- Cannot be verified with high confidence, as explained in 1994 by then-Director of the Central Intelligence Agency James Woolsey.

This paper does not attempt to analyze the pros and cons of the Convention; rather, it provides information on the provisions of the CWC and the Resolution of Ratification. For a discussion of the pro and con arguments, see RPC paper, "Should the Senate Ratify the Chemical Weapons Convention," 10/6/94. For a discussion of the CWC's implication for businesses, see RPC paper "The Chemical Weapons Convention: Impact on U.S. Business Could Be Far-Reaching," 7/29/96. [At press time, a Committee report was unavailable.]

Provisions of the CWC

- The CWC bans the acquisition, development, stockpiling, transfer, retention and use of chemical weapons.
- Under the terms of the Convention, each state party is prohibited from:
 - Using chemical weapons;
 - Engaging in any military preparations to use chemical weapons;

- Assisting, encouraging or inducing, in any way, anyone to engage in any activities prohibited by the Convention; and,
 - Using riot control agents — such as tear gas — as a method of warfare.
- Each State Party is also obligated to destroy:
 - Chemical weapons it owns or possesses or that are located in any place under its jurisdiction or control within 10 years of the Treaty's entry into force;
 - All chemical weapons it abandoned on the territory of another State Party;
 - Any chemical weapons production facilities it owns or possesses or that are located in any place under its jurisdiction or control. The Convention does not require the destruction of toxic chemicals, their precursors, or facilities that are used for peaceful purposes, or are otherwise used for purposes not prohibited under the Convention.
 - Each State Party undertakes to facilitate, and shall have the right to participate in, the fullest possible exchange of equipment, material and scientific and technological information concerning means of protection against chemical weapons.
 - The Treaty is of unlimited duration, but each State Party retains the right to withdraw from the Convention if it decides that extraordinary events related to the subject matter of this treaty have jeopardized the supreme interests of its country.

Verification and Implementation

- Verification of compliance will be confirmed through routine and challenge inspections. Routine inspections would be directed at sites producing chemicals that present the greatest risk of diversion to weapons uses; a party could be subject to up to 20 routine inspections per year and a specific site up to two inspections. Challenge inspections would be conducted pursuant to a request by a party to the CWC and can take place anywhere (e.g., at any site, declared or undeclared, and at government- or privately-owned facilities) and anytime, on short (12 hour) notice; there is no limit on the possible number of challenge inspections.
- An international organization, the *Organization for the Prohibition of Chemical Weapons (OPCW)* is established to oversee implementation of the agreement. Since this organization is under the umbrella of the United Nations, funding of the OPCW will be based on the U.N. scale of assessment, which means the United States can be expected to pay about 25 percent of the OPCW budget.
- Three organizations make up the OPCW, each with the following responsibilities and membership:
 - *Conference of State Parties*, responsible for establishing general policies for implementing the Convention and overseeing the functions of the organization. It will consist of the representatives of all States Parties to the Convention.

- *Executive Council*, the executive arm of the organization, whose members will include representatives of 41 of the participating states chosen for geographical balance.
- *Technical Secretariat*, to be led by a Director General, responsible for carrying out the inspections to verify compliance.

Federal Implementing Legislation: S. 1732

- U.S. ratification of the CWC would also require the passage of implementing legislation. In compliance with provisions of the CWC, S. 1732, the Chemical Weapons Convention Implementation Act of 1995, establishes a "U.S. national authority" to serve as "the national focal point for effective liaison" with the international OPCW and other States Parties to the Convention.
- S. 1732 also outlines the application of the Convention's prohibitions to natural and legal persons; reporting requirements; and inspections (including prohibited acts and civil and criminal penalties).
- The legislation requires the filing of reports by each person who "produces, processes, consumes, exports or imports, or proposes to produce, process, consume, export or import," a chemical substance subject to the CWC, as reasonably required by the "U.S. national authority." The implementing legislation makes it illegal to fail to or refuse to submit these reports. In addition, those who fail to file these reports are subject to a fine not to exceed \$5,000 and/or not more than two years in jail.
- The legislation makes it a criminal offense for a U.S. officer or employee to disclose prohibited information to any person inside or outside of the United States. This provision also applies to employees of the Technical Secretariat.
- Any person who produces, acquires, retains, transfers, or uses a chemical listed on Schedule 1 of the Annex on Chemicals of the CWC (e.g., substances that are highly toxic and are either known military agents or immediate precursor chemicals for military applications) will be fined an amount not to exceed \$50,000 for each violation. Any person who knowingly violates this provision can, in addition, be imprisoned for not more than two years.
- S. 1732 prohibits any person from refusing entry or inspection to disrupt, delay, or otherwise impede an inspection. Anyone who violates this provision shall be fined no more than \$25,000 per violation. Further, anyone who knowingly violates this provision can also be imprisoned for not more than two years.
- Finally, the legislation prohibits a court from issuing an injunction or other order that would limit the ability of the Technical Secretariat to conduct, or the "U.S. national authority" or the "Lead Agency" (the agency or department designated by the President to

exercise the functions and powers set forth in a specific provision) to facilitate, inspections as required or authorized by the CWC.

Parliamentary Situation

According to the U.C., two amendments to the resolution of ratification by the Republican Leader or his designee are in order, with one hour of debate on each amendment, equally divided. There also will be 10 additional hours of debate on the resolution itself, again equally divided. At press time, it was unclear whether such amendments would be offered.

The Resolution of Ratification

During markup of a treaty, a committee can add conditions that the President must accept before proceeding to ratification. In addition, a Resolution of Ratification can include declarations — statements of the Senate's position, opinion or intentions on matters relating to issues raised by the treaty, but not to its specific provisions. Declarations are similar to "sense of the Senate" resolutions. Understandings are interpretive statements consistent with the treaty text, but included for the purpose of clarifying or elaborating, rather than changing, the provisions of the treaty.

In Committee markup of the Chemical Weapons Convention on April 30, 1996, Chairman Helms offered a Resolution of Ratification with 20 conditions, five understandings and two declarations, which was rejected by a vote of 5-13, with Senators Brown, Ashcroft, Coverdell and Grams joining Senator Helms in voting in favor of the Helms resolution. Senator Lugar then offered an amendment to the Resolution of Ratification, in the nature of a substitute, which included 7 conditions and 11 declarations. The conditions addressed such issues as noncompliance, Presidential certification on Russian data declarations and the Bilateral Destruction Agreement and implementation arrangements. The declarations expressed the Senate's opinion on assistance to Russia, compliance, riot control agents and the U.S. chemical defense program.

This amended Resolution of Ratification passed by a vote of 13-5, with Senators Lugar, Kassebaum, Snowe, Thompson, Thomas, Pell, Biden, Sarbanes, Dodd, Kerry, Robb, Feingold and Feinstein voting in the affirmative and Senators Helms, Brown, Ashcroft, Coverdell and Grams voting in the negative.

A two-thirds affirmation of those present is required for the Senate to provide its advice and consent to a treaty.

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